

RESOLUTION NO. 2009-32

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING SECOND AMENDMENT OF 2003 WATER
SALE AGREEMENT BETWEEN WOODBRIDGE
IRRIGATION DISTRICT AND THE CITY OF LODI

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Second Amendment to the 2003 Water Sale Agreement between Woodbridge Irrigation District and the City of Lodi permitting the City of Lodi to sell a portion of its banked water, as shown on Exhibit A attached hereto; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute the amendment.

Dated: March 18, 2009

=====

I hereby certify that Resolution No. 2009-32 was passed and adopted by the City Council of the City of Lodi in a regular meeting held March 18, 2009, by the following vote:

AYES: COUNCIL MEMBERS –Johnson, Katzakian, and Mayor Hansen

NOES: COUNCIL MEMBERS – Hitchcock and Mounce

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk

**SECOND AMENDMENT TO 2003 AGREEMENT FOR PURCHASE OF WATER
FROM WOODBRIDGE IRRIGATION DISTRICT BY CITY OF LODI,
TO PERMIT LODI TO SELL PORTION OF ITS BANKED WATER**

This agreement is entered into between the City of Lodi (City) and the Woodbridge Irrigation District (District) this ____ day of _____, 2009.

Recitals

A. On May 13, 2003, City entered into a 40-year Agreement with District for the City's purchase of water from District entitled "Agreement for Purchase of Water from the Woodbridge Irrigation District by the City of Lodi" (and hereinafter referred to as the 2003 Agreement). The Agreement provided for the City's purchase of a base supply of 6,000 acre-feet per annum (plus additional amounts on specified conditions), for a payment commencing at \$200 per acre-foot or \$1,200,000 annually for the base supply, subject to later annual price adjustments, the water to be delivered to City from March 1 through October 15. Under the Agreement, the water must be used within City's service area, and City can not assign or transfer the right to the water without the consent of the District.

B. The 2003 Agreement provides for annual payments to District whether or not the water is used by City. Payments of \$300,000 quarterly by City to District under the Agreement commenced on October 1, 2003. The water must be treated. Plans for treatment and use of the water from the District have been delayed. City is preparing to enter a contract with the firm of HDR, Inc. in an amount of \$2.9 million dollars for the complete design, to a level ready for bidding of construction, of new treatment plant works, which would treat the water delivered by District for use by the City customers. No District water has been taken or used to date by the City under the 2003 Agreement.

C. Paragraph 8 of the 2003 Agreement provides that City can carry over and have credit for unused water during the initial three years, of up to 18,000 acre-feet, referred to as "banked water" in the Agreement, for later delivery to City in subsequent years in which District has water available for such deliveries.

D. On January 17, 2008, the parties entered into a First Amendment to the 2003 Agreement, which, among other things, extended the 40-year term of the 2003 Agreement, an additional four years and five months, and which also extended City's right to carry over and bank an additional 24,000 acre-feet of water that was unused by the City up to October 15, 2010, thus giving City a right to bank a combined total of 42,000 acre-feet.

E. This Second Amendment to the 2003 Agreement is intended to provide District's consent to City, working with the District's Manager, to pursue agreements to sell up to 18,000 acre-feet of its first three years of banked water to others.

**NOW, THEREFORE, WOODBRIDGE IRRIGATION DISTRICT AND
THE CITY OF LODI AGREE AS FOLLOWS:**

1. City may pursue, working with the District's Manager, a sale agreement or agreements with others for their purchase during the years 2009, 2010 and 2011, of up to 6,000 acre-feet of water per year banked by the City, for a total of 18,000 acre-feet of banked water if 1) in the year of sale District's Regulated Base Supply entitlement under District's Agreement with EBMUD is a full 60,000 acre-feet, and if 2) the District is able to make the water to be transferred available from its Regulated Base Supply for delivery in the year of sale, as solely determined by District.. Any resulting agreement shall be subject to the District's approval and the District shall be a party. If District's Regulated Base Supply is less than 60,000 acre-feet in any such year, City may pursue the sale of not more than one-half of 6,000 acre-feet in such year subject to the same terms and conditions of availability. District will be unable to finally determine whether District's Regulated Base Supply is less than 60,000 acre-feet until July 1 of each year. District shall have no responsibility or obligation to City if District cannot or does not make such water available for transfer, or if any such transfer fails for any reason beyond the control of District. However, City will retain its banked water rights if the transfer does fail.

2. The sale price payable to Lodi shall be not less than \$200 per acre-foot, plus in year 2011 the inflator factor which commences in that year in the 2003 Agreement. City shall pay to District (in advance if requested by District), all costs and expenses (legal, engineering or otherwise), incurred or estimated by District to be incurred, in assisting and/or implementing the sale by City.

3. District shall not be obligated to approve any sales that impose or potentially impose any conditions upon District's water rights or requirements upon District that are unsatisfactory to District.

4. City agrees that the City's proceeds of any such sale shall be used solely for the planning, design and/or construction of its planned treatment plant facilities or to reimburse other City funds used for such purposes.

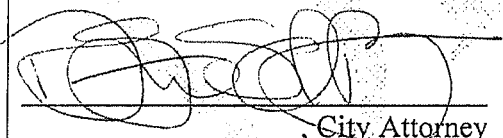
5. City acknowledges the value and benefit to it of the District approving such sales of water by the City pursuant to this Agreement, in that District itself could undertake for its own benefit to sell directly any surplus water it may have available during the next three years. Nothing herein shall prevent or preclude District also selling any surplus water that it has available in any such year above the amount sold by City, or from selling any surplus District water if City fails to sell such water, or if City sells less than 6,000 acre-feet, from selling any surplus water above the amount of water sold by City.

6. This Agreement does not authorize or establish a precedent for District's approval of any future sale by City of any banked water it may have under its 2003 Agreement with District, either beyond year 2011 or beyond 18,000 acre-feet, and

nothing herein shall be construed to indicate that District will authorize or consent to any future sale of such water.

7. The recitals herein are general background descriptions, but each and every provision in the prior 2003 Agreement and the 2008 First Amendment to Agreement between the parties, remains in full force and effect according to their terms, except as herein expressly modified.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective on the day and year above set forth.

<p>Attest:</p> <p>_____ Anders Christensen, Secretary</p>	<p>WOODBIDGE IRRIGATION DISTRICT</p> <p>By _____ William Stokes, President</p>
<p>Attest:</p> <p>_____, City Clerk</p> <p>APPROVED AS TO FORM:</p>  <p>_____, City Attorney</p>	<p>CITY OF LODI, A MUNICIPAL CORPORATION</p> <p>By _____, Mayor</p>

2.13.09